

Union Calendar No. 64

105TH CONGRESS
1ST Session

H. R. 1420

[Report No. 105-106]

A BILL

To amend the National Wildlife Refuge System Administration Act of 1966 to improve the management of the National Wildlife Refuge System, and for other purposes.

MAY 21, 1997

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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IN THE HOUSE OF REPRESENTATIVES

APRIL 23, 1997

Mr. YOUNG of Alaska (for himself, Mr. DINGELL, Mr. SAXTON, Mr. TANNER, and Mr. CUNNINGHAM) introduced the following bill; which was referred to the Committee on Resources

MAY 21, 1997

Additional sponsors: Mr. MILLER of California, Mr. CLEMENT, and Mr. ABERCROMBIE

MAY 21, 1997

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A BILL

To amend the National Wildlife Refuge System Administration Act of 1966 to improve the management of the National Wildlife Refuge System, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; REFERENCES.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “National Wildlife Refuge System Improvement Act of
4 1997”.

5 (b) REFERENCES.—Whenever in this Act an amend-
6 ment or repeal is expressed in terms of an amendment
7 to, or repeal of, a section or other provision, the reference
8 shall be considered to be made to a section or provision
9 of the National Wildlife Refuge System Administration
10 Act of 1966 (16 U.S.C. 668dd et seq.).

11 **SEC. 2. FINDINGS.**

12 The Congress finds the following:

13 (1) The National Wildlife Refuge System is
14 comprised of over 92,000,000 acres of Federal lands
15 that have been incorporated within 509 individual
16 units located in all 50 States and our territories.

17 (2) The System was created to conserve fish,
18 wildlife, and plants and their habitats and this con-
19 servation mission has been facilitated by providing
20 Americans opportunities to participate in compatible
21 wildlife-dependent recreation, including fishing and
22 hunting, on System lands and to better appreciate
23 the value of and need for fish and wildlife conserva-
24 tion.

25 (3) The System serves a pivotal role in the con-
26 servation of migratory birds, anadromous and inter-

1 jurisdictional fish, marine mammals, endangered and
2 threatened species, and the habitats on which these
3 species depend.

4 (4) The System assists in the fulfillment of im-
5 portant international treaty obligations of the Unit-
6 ed States with regard to fish, wildlife, and plants
7 and their habitats.

8 (5) The System includes lands purchased not
9 only through the use of tax dollars but also through
10 the sale of Duck Stamps and refuge entrance fees.
11 It is a System that is financially supported by those
12 benefiting from and utilizing it.

13 (6) When managed in accordance with prin-
14 ciples of sound fish and wildlife management and
15 administration, fishing, hunting, wildlife observation,
16 and environmental education in refuges have been
17 and are expected to continue to be generally compat-
18 ible uses.

19 (7) On March 25, 1996, the President issued
20 Executive Order 12996 which recognized “compat-
21 ible wildlife-dependent recreational uses involving
22 hunting, fishing, wildlife observation and photog-
23 raphy, and environmental education and interpreta-
24 tion as priority public uses of the Refuge System”.

1 (8) Executive Order 12996 is a positive step
2 and serves as the foundation for the permanent stat-
3 utory changes made by this Act.

4 **SEC. 3. DEFINITIONS.**

5 (a) IN GENERAL.—Section 5 (16 U.S.C. 668ee) is
6 amended to read as follows:

7 **“SEC. 5. DEFINITIONS.**

8 “For purposes of this Act:

9 “(1) The term ‘compatible use’ means a use
10 that, in the sound professional judgment of the Di-
11 rector, will not materially interfere with or detract
12 from the fulfillment of the mission of the System or
13 the purposes of a refuge.

14 “(2) The terms ‘wildlife-dependent recreation’
15 and ‘wildlife-dependent recreational use’ mean a use
16 of a refuge involving hunting, fishing, wildlife obser-
17 vation and photography, or environmental education
18 and interpretation.

19 “(3) The term ‘sound professional judgment’
20 means a finding, determination, or decision that is
21 consistent with principles of sound fish and wildlife
22 management and administration, available science
23 and resources, and adherence to the requirements of
24 this Act and other applicable laws.

1 “(4) The terms ‘conserving’, ‘conservation’,
2 ‘manage’, ‘managing’, and ‘management’, mean to
3 sustain and, where appropriate, restore and enhance,
4 healthy populations of fish, wildlife, and plants uti-
5 lizing, in accordance with applicable Federal and
6 State laws, methods and procedures associated with
7 modern scientific resource programs. Such methods
8 and procedures include, consistent with the provi-
9 sions of this Act, protection, research, census, law
10 enforcement, habitat management, propagation, live
11 trapping and transplantation, and regulated taking.

12 “(5) The term ‘Coordination Area’ means a
13 wildlife management area that is made available to
14 a State—

15 “(A) by cooperative agreement between the
16 United States Fish and Wildlife Service and the
17 State fish and game agency pursuant to section
18 4 of the Fish and Wildlife Coordination Act (16
19 U.S.C. 664); or

20 “(B) by long-term leases or agreements
21 pursuant to the Bankhead-Jones Farm Tenant
22 Act (50 Stat. 525; 7 U.S.C. 1010 et seq.).

23 “(6) The term ‘Director’ means the Director of
24 the United States Fish and Wildlife Service or his
25 designee.

1 “(7) The terms ‘fish’, ‘wildlife’, and ‘fish and
2 wildlife’ mean any wild member of the animal king-
3 dom whether alive or dead, and regardless of wheth-
4 er the member was bred, hatched, or born in cap-
5 tivity, including a part, product, egg, or offspring of
6 the member.

7 “(8) The term ‘person’ means any individual,
8 partnership, corporation, or association.

9 “(9) The term ‘plant’ means any member of the
10 plant kingdom in a wild, unconfined state, including
11 any plant community, seed, root, or other part of a
12 plant.

13 “(10) The terms ‘purposes of the refuge’ and
14 ‘purposes of each refuge’ mean the purposes speci-
15 fied in or derived from the law, proclamation, execu-
16 tive order, agreement, public land order, donation
17 document, or administrative memorandum establish-
18 ing, authorizing, or expanding a refuge, refuge unit,
19 or refuge subunit.

20 “(11) The term ‘refuge’ means a designated
21 area of land, water, or an interest in land or water
22 within the System, but does not include Coordina-
23 tion Areas.

24 “(12) The term ‘Secretary’ means the Secretary
25 of the Interior.

1 “(13) The terms ‘State’ and ‘United States’
 2 mean the several States of the United States, Puerto
 3 Rico, American Samoa, the Virgin Islands, Guam,
 4 and the insular possessions of the United States.

5 “(14) The term ‘System’ means the National
 6 Wildlife Refuge System designated under section
 7 4(a)(1).

8 “(15) The terms ‘take’, ‘taking’, and ‘taken’
 9 mean to pursue, hunt, shoot, capture, collect, or kill,
 10 or to attempt to pursue, hunt, shoot, capture, col-
 11 lect, or kill.”.

12 (b) CONFORMING AMENDMENT.—Section 4 (16
 13 U.S.C. 668dd) is amended by striking “Secretary of the
 14 Interior” each place it appears and inserting “Secretary”.

15 **SEC. 4. MISSION OF THE SYSTEM.**

16 Section 4(a) (16 U.S.C. 668dd(a)) is amended—

17 (1) by redesignating paragraphs (2) and (3) as
 18 paragraphs (5) and (6), respectively;

19 (2) in clause (i) of paragraph (6) (as so redesign-
 20 ated), by striking “paragraph (2)” and inserting
 21 “paragraph (5)”; and

22 (3) by inserting after paragraph (1) the follow-
 23 ing new paragraph:

24 “(2) The mission of the System is to administer a
 25 national network of lands and waters for the conservation,

1 management, and where appropriate, restoration of the
2 fish, wildlife and plant resources and their habitats within
3 the United States for the benefit of present and future
4 generations of Americans.”.

5 **SEC. 5. ADMINISTRATION OF THE SYSTEM.**

6 (a) ADMINISTRATION GENERALLY.—Section 4(a) (16
7 U.S.C. 668dd(a)), as amended by section 3 of this Act,
8 is further amended by inserting after new paragraph (2)
9 the following new paragraphs:

10 “(3) With respect to the System, it is the policy of
11 the United States of America that—

12 “(A) each refuge shall be managed to fulfill the
13 mission of the System, as well as the specific pur-
14 poses for which that refuge was established;

15 “(B) compatible wildlife-dependent recreation is
16 a legitimate and appropriate general public use of
17 the System, directly related to the mission of the
18 System and the purposes of many refuges, and
19 which generally fosters refuge management and
20 through which the American public can develop an
21 appreciation for fish and wildlife;

22 “(C) compatible wildlife-dependent recreational
23 uses are the priority general public uses of the Sys-
24 tem and shall receive priority consideration in refuge
25 planning and management;

1 “(D) when the Secretary determines that a pro-
2 posed wildlife-dependent recreational use is a com-
3 patible use within a refuge, that activity should be
4 facilitated, subject to such restrictions or regulations
5 as may be necessary, reasonable and appropriate.

6 “(4) In administering the System, the Secretary
7 shall—

8 “(A) provide for the conservation of fish, wild-
9 life, and plants, and their habitats within the Sys-
10 tem;

11 “(B) ensure that the biological integrity, diver-
12 sity, and environmental health of the System are
13 maintained for the benefit of present and future
14 generations of Americans;

15 “(C) plan and direct the continued growth of
16 the System in a manner that is best designed to ac-
17 complish the mission of the System, to contribute to
18 the conservation of the ecosystems of the United
19 States, to complement efforts of States and other
20 Federal agencies to conserve fish and wildlife and
21 their habitats and to increase support for the Sys-
22 tem and participation from conservation partners
23 and the public;

24 “(D) ensure that the mission of the System de-
25 scribed in paragraph (2) and the purposes of each

1 refuge are carried out, except that if a conflict exists
2 between the purposes of a refuge and the mission of
3 the System, the conflict shall be resolved in a man-
4 ner that first protects the purposes of the refuge,
5 and, to the extent practicable, that also achieves the
6 mission of the System;

7 “(E) ensure effective coordination, interaction,
8 and cooperation with owners of land adjoining ref-
9 uges and the fish and wildlife agency of the States
10 in which the units of the System are located;

11 “(F) assist in the maintenance of adequate
12 water quantity and water quality to fulfill the mis-
13 sion of the System and the purposes of each refuge;

14 “(G) acquire, under State law, water rights that
15 are needed for refuge purposes;

16 “(H) recognize compatible wildlife-dependent
17 recreational uses as the priority general public uses
18 of the System through which the American public
19 can develop an appreciation for fish and wildlife;

20 “(I) ensure that opportunities are provided for
21 compatible wildlife-dependent recreational activities
22 within the System;

23 “(J) ensure that priority general public uses re-
24 ceive enhanced consideration over other general pub-

1 lic uses in planning and management within the Sys-
2 tem;

3 “(K) provide increased opportunities for fami-
4 lies to experience compatible wildlife-dependent
5 recreation, particularly opportunities for parents and
6 their children to safely engage in traditional outdoor
7 activities, such as fishing and hunting;

8 “(L) continue, consistent with existing laws and
9 interagency agreements, authorized or permitted
10 uses of units of the System by other Federal agen-
11 cies, including those necessary to facilitate military
12 preparedness;

13 “(M) ensure timely and effective cooperation
14 and collaboration with Federal agencies and State
15 fish and wildlife agencies during the course of ac-
16 quiring and managing refuges.”.

17 (b) POWERS.—Section 4(b) (16 U.S.C. 668dd(b)) is
18 amended—

19 (1) in the matter preceding paragraph (1) by
20 striking “authorized—” and inserting “authorized to
21 take the following actions:”;

22 (2) in paragraph (1) by striking “to enter” and
23 inserting “Enter”;

24 (3) in paragraph (2)—

1 (A) by striking “to accept” and inserting
2 “Accept”; and

3 (B) by striking “, and” and inserting a pe-
4 riod;

5 (4) in paragraph (3) by striking “to acquire”
6 and inserting “Acquire”; and

7 (5) by adding at the end the following new
8 paragraph:

9 “(4) Subject to standards established by and the
10 overall management oversight of the Director, and consist-
11 ent with standards established by this Act, enter into coop-
12 erative agreements with State fish and wildlife agencies
13 for the management of programs on a refuge.”.

14 **SEC. 6. COMPATIBILITY STANDARDS AND PROCEDURES.**

15 Section 4(d) (16 U.S.C. 668dd(d)) is amended by
16 adding at the end the following new paragraph:

17 “(3)(A)(i) Except as provided in clause (iv), the Sec-
18 retary shall not initiate or permit a new use of a refuge
19 or expand, renew, or extend an existing use of a refuge,
20 unless the Secretary has determined that the use is a com-
21 patible use and that the use is not inconsistent with public
22 safety. The Secretary may make the determinations re-
23 ferred to in this paragraph for a refuge concurrently with
24 development of a conservation plan under subsection (e).

1 “(ii) On lands added to the System after March 25,
2 1996, the Secretary shall identify, prior to acquisition,
3 withdrawal, transfer, reclassification, or donation of any
4 such lands, existing compatible wildlife-dependent uses
5 that the Secretary determines shall be permitted to con-
6 tinue on an interim basis pending completion of the com-
7 prehensive conservation plan for the refuge.

8 “(iii) Wildlife-dependent recreational uses may be au-
9 thorized on a refuge when they are compatible and not
10 inconsistent with public safety. Except for consideration
11 of consistency with State laws and regulations as provided
12 for in subsection (m), no other determinations or findings
13 are required to be made by the refuge official under this
14 Act or the Refuge Recreation Act for wildlife-dependent
15 recreation to occur.

16 “(iv) Compatibility determinations in existence on the
17 date of enactment of this Act shall remain in effect until
18 and unless modified.

19 “(B) Not later than 24 months after the date of the
20 enactment of the National Wildlife Refuge System Im-
21 provement Act of 1997, the Secretary shall issue final reg-
22 ulations establishing the process for determining under
23 subparagraph (A) whether a use of a refuge is a compat-
24 ible use. These regulations shall—

1 “(i) designate the refuge official responsible for
2 making initial compatibility determinations;

3 “(ii) require an estimate of the timeframe, loca-
4 tion, manner, and purpose of each use;

5 “(iii) identify the effects of each use on refuge
6 resources and purposes of each refuge;

7 “(iv) require that compatibility determinations
8 be made in writing;

9 “(v) provide for the expedited consideration of
10 uses that will likely have no detrimental effect on
11 the fulfillment of the purposes of a refuge or the
12 mission of the System;

13 “(vi) provide for the elimination or modification
14 of any use as expeditiously as practicable after a de-
15 termination is made that the use is not a compatible
16 use;

17 “(vii) require, after an opportunity for public
18 comment, reevaluation of each existing use, other
19 than those uses specified in clause (viii), when condi-
20 tions under which the use is permitted change sig-
21 nificantly or when there is significant new informa-
22 tion regarding the effects of the use, but not less
23 frequently than once every 10 years, to ensure that
24 the use remains a compatible use;

1 “(viii) require, after an opportunity for public
2 comment, reevaluation of each compatible wildlife-
3 dependent recreational use when conditions under
4 which the use is permitted change significantly or
5 when there is significant new information regarding
6 the effects of the use, but not less frequently than
7 in conjunction with each preparation or revision of
8 a conservation plan under subsection (e) or at least
9 every 15 years; and

10 “(ix) provide an opportunity for public review
11 and comment on each evaluation of a use, unless an
12 opportunity for public review and comment on the
13 evaluation of the use has already been provided dur-
14 ing the development or revision of a conservation
15 plan for the refuge under subsection (e) or has oth-
16 erwise been provided during routine, periodic deter-
17 minations of compatibility for wildlife-dependent rec-
18 reational uses.

19 “(4) The provisions of this Act relating to determina-
20 tions of the compatibility of a use shall not apply to—

21 “(A) overflights above a refuge; and

22 “(B) activities authorized, funded, or conducted
23 by a Federal agency (other than the United States
24 Fish and Wildlife Service) which has primary juris-
25 diction over the refuge or a portion of the refuge, if

1 the management of those activities is in accordance
2 with a memorandum of understanding between the
3 Secretary or the Director and the head of the Fed-
4 eral agency with primary jurisdiction over the refuge
5 governing the use of the refuge.

6 “(5) Overflights above a refuge may be governed by
7 any memorandum of understanding entered into by the
8 Secretary that applies to the refuge.”.

9 **SEC. 7. REFUGE CONSERVATION PLANNING PROGRAM.**

10 (a) IN GENERAL.—Section 4 (16 U.S.C. 668dd) is
11 amended—

12 (1) by redesignating subsections (e) through (i)
13 as subsections (f) through (j), respectively; and

14 (2) by inserting after subsection (d) the follow-
15 ing new subsection:

16 “(e)(1)(A) Except with respect to refuge lands in
17 Alaska (which shall be governed by the refuge planning
18 provisions of the Alaska National Interest Lands Con-
19 servation Act (16 U.S.C. 3101 et seq.)), the Secretary
20 shall—

21 “(i) propose a comprehensive conservation plan
22 for each refuge or related complex of refuges (re-
23 ferred to in this subsection as a ‘planning unit’) in
24 the System;

1 “(ii) publish a notice of opportunity for public
2 comment in the Federal Register on each proposed
3 conservation plan;

4 “(iii) issue a final conservation plan for each
5 planning unit consistent with the provisions of this
6 Act and, to the extent practicable, consistent with
7 fish and wildlife conservation plans of the State in
8 which the refuge is located; and

9 “(iv) not less frequently than 15 years after the
10 date of issuance of a conservation plan under clause
11 (iii) and every 15 years thereafter, revise the con-
12 servation plan as may be necessary.

13 “(B) The Secretary shall prepare a comprehensive
14 conservation plan under this subsection for each refuge
15 within 15 years after the date of enactment of the Na-
16 tional Wildlife Refuge System Improvement Act of 1997.

17 “(C) The Secretary shall manage each refuge or plan-
18 ning unit under plans in effect on the date of enactment
19 of the National Wildlife Refuge System Improvement Act
20 of 1997, to the extent such plans are consistent with this
21 Act, until such plans are revised or superseded by new
22 comprehensive conservation plans issued under this sub-
23 section.

24 “(D) Uses or activities consistent with this Act may
25 occur on any refuge or planning unit before existing plans

1 are revised or new comprehensive conservation plans are
2 issued under this subsection.

3 “(E) Upon completion of a comprehensive conserva-
4 tion plan under this subsection for a refuge or planning
5 unit, the Secretary shall manage the refuge or planning
6 unit in a manner consistent with the plan and shall revise
7 the plan at any time if the Secretary determines that con-
8 ditions that affect the refuge or planning unit have
9 changed significantly.

10 “(2) In developing each comprehensive conservation
11 plan under this subsection for a planning unit, the Sec-
12 retary, acting through the Director, shall identify and de-
13 scribe—

14 “(A) the purposes of each refuge comprising
15 the planning unit;

16 “(B) the distribution, migration patterns, and
17 abundance of fish, wildlife, and plant populations
18 and related habitats within the planning unit;

19 “(C) the archaeological and cultural values of
20 the planning unit;

21 “(D) such areas within the planning unit that
22 are suitable for use as administrative sites or visitor
23 facilities;

24 “(E) significant problems that may adversely
25 affect the populations and habitats of fish, wildlife,

1 and plants within the planning unit and the actions
2 necessary to correct or mitigate such problems; and

3 “(F) opportunities for compatible wildlife-de-
4 pendent recreation.

5 “(3) In preparing each comprehensive conservation
6 plan under this subsection, and any revision to such a
7 plan, the Secretary, acting through the Director, shall, to
8 the maximum extent practicable and consistent with this
9 Act—

10 “(A) consult with adjoining Federal, State,
11 local, and private landowners and affected State con-
12 servation agencies; and

13 “(B) coordinate the development of the con-
14 servation plan or revision of the plan with relevant
15 State conservation plans for fish and wildlife and
16 their habitats.

17 “(4)(A) In accordance with subparagraph (B), the
18 Secretary shall develop and implement a process to ensure
19 an opportunity for active public involvement in the prepa-
20 ration and revision of comprehensive conservation plans
21 under this subsection. At a minimum, the Secretary shall
22 require that publication of any final plan shall include a
23 summary of the comments made by States, adjacent or
24 potentially affected landowners, local governments, and

1 any other affected parties, together with a statement of
2 the disposition of concerns expressed in those comments.

3 “(B) Prior to the adoption of each comprehensive
4 conservation plan under this subsection, the Secretary
5 shall issue public notice of the draft proposed plan, make
6 copies of the plan available at the affected field and re-
7 gional offices of the United States Fish and Wildlife Serv-
8 ice, and provide opportunity for public comment.”.

9 **SEC. 8. EMERGENCY POWER; PRESIDENTIAL EXEMPTION;**
10 **STATE AUTHORITY; WATER RIGHTS; COORDI-**
11 **NATION.**

12 (a) IN GENERAL.—Section 4 (16 U.S.C. 668dd) is
13 further amended by adding at the end the following new
14 subsections:

15 “(k) Notwithstanding any other provision of this Act
16 the Secretary may temporarily suspend, allow, or initiate
17 any activity in a refuge in the System if the Secretary
18 determines it is necessary to protect the health and safety
19 of the public or any fish or wildlife population.

20 “(l) Nothing in this Act shall be construed to author-
21 ize the Secretary to control or regulate hunting or fishing
22 of fish and resident wildlife on lands or waters not within
23 the System.

24 “(m) Nothing in this Act shall be construed as affect-
25 ing the authority, jurisdiction, or responsibility of the sev-

1 eral States to manage, control, or regulate fish and resi-
2 dent wildlife under State law or regulations in any area
3 within the System. Regulations permitting hunting or fish-
4 ing of fish and resident wildlife within the System shall
5 be, to the extent practicable, consistent with State fish and
6 wildlife laws, regulations, or management plans.

7 “(n)(1) Nothing in this Act shall—

8 “(A) create a reserved water right, express or
9 implied, in the United States for any purpose;

10 “(B) affect any water right in existence on the
11 date of enactment of the National Wildlife Refuge
12 System Improvement Act of 1997; or

13 “(C) affect any Federal or State law in exist-
14 ence on the date of the enactment of the National
15 Wildlife Refuge System Improvement Act of 1997
16 regarding water quality or water quantity.

17 “(2) Nothing in this Act shall diminish or affect the
18 ability to join the United States in the adjudication of
19 rights to the use of water pursuant to the McCarran Act
20 (43 U.S.C. 666).

21 “(o) Coordination with State fish and wildlife agency
22 personnel or with personnel of other affected State agen-
23 cies pursuant to this Act shall not be subject to the Fed-
24 eral Advisory Committee Act (5 U.S.C. App.).”.

1 (b) CONFORMING AMENDMENT.—Section 4(c) (16
2 U.S.C. 668dd(c)) is amended by striking the last sentence.

3 **SEC. 9. STATUTORY CONSTRUCTION.**

4 (a) Nothing in this Act is intended to affect—

5 (1) the provisions for subsistence uses in Alaska
6 set forth in the Alaska National Interest Lands Con-
7 servation Act (Public Law 96–487), including those
8 in titles III and VIII of that Act;

9 (2) the provisions of section 102 of the Alaska
10 National Interest Lands Conservation Act, the juris-
11 diction over subsistence uses in Alaska, or any asser-
12 tion of subsistence uses in the Federal courts; and

13 (3) the manner in which section 810 of the
14 Alaska National Interest Lands Conservation Act is
15 implemented in refuges in Alaska.

16 (b) If any conflict arises between any provision of this
17 Act and any provision of the Alaska National Interest
18 Lands Conservation Act, then the provision in the Alaska
19 National Interest Lands Conservation Act shall prevail.